

HB 1188 -- WHISTLEBLOWER PROTECTION ACT

SPONSOR: Elmer

COMMITTEE ACTION: Voted "Do Pass" by the Committee on Workforce Development and Workplace Safety by a vote of 6 to 4.

This bill establishes the Whistleblower Protection Act which places in statute existing common law exceptions to the at-will employment doctrine making it an unlawful employment practice for an employer to discharge or retaliate against an individual who is a protected person. The bill:

(1) Defines the term "because of" or "because," as it relates to a decision or action, to mean the protected criterion was the motivating factor;

(2) Defines "employer" as an entity that has six or more employees for each working day in each of twenty or more calendar weeks in the current or preceding year. Employer does not include the state of Missouri, its political subdivisions, a corporation wholly owned by the state, or an individual employed by an employer, corporation, or association owned and operated by a religious or sectarian group;

(3) Defines "proper authorities" as a governmental or law enforcement agency or an officer or the employee's human resources representative employed by the employer;

(4) Defines "protected person" as a person who has reported to the proper authorities an unlawful act of the employer or its agent or who reports to an employer serious misconduct of the employer or its agent that violates a state law or regulation; a person who has refused to carry out a directive issued by the employer or its agent that if completed would be a violation of the law; or a person who engages in conduct otherwise protected by statute or regulation where the protecting statute or regulation does not provide a private right of action. A person is not a protected person where the person is exempt from overtime compensation under the fair labor standards act, or is a supervisory, managerial, or executive employee, or an officer of the employer, and the unlawful act or serious misconduct reported concerns matters upon which the person is employed to report or provide professional opinion;

(5) Specifies that the provisions of the act will provide the exclusive remedy for any and all unlawful employment practices described in the act and voids any common law causes of action to the contrary;

(6) Specifies that a protected person aggrieved by a violation will have a private right of action for actual damages but not for punitive damages. If a private right of action for damages exists under another statutory or regulatory scheme, whether under state or federal law, no private right of action will exist under this section;

(7) Specifies that any party to an action under these provisions may demand a trial by jury; and

(8) A protected person aggrieved by a violation will have a private right of action that can be filed in a circuit court. The only remedies, legal or equitable, which are available in the action are back pay and reimbursement of medical bills incurred in treatment of mental anguish. If a protected person proves by clear and convincing evidence that the conduct of the employer was outrageous because of the employer's evil motive or reckless indifference to the rights of others, then an additional double amount as liquidated damages may be awarded. The provisions of Section 510.263 shall be applied as though the back pay and reimbursement of medical bills were compensatory damage and the liquidated damages were punitive damages.

PROPOSERS: Supporters say that the bill simply codifies the common law "public policy" exception to the employment-at-will doctrine.

Testifying for the bill were Representative Elmer; Missouri Chamber of Commerce and Industry; Associated Industries of Missouri; Missouri Retailers Association; Missouri Grocers Association; Greater Kansas City Chamber of Commerce; and Missouri Rental Dealers Association.

OPPOSERS: Those who oppose the bill say that it is a gross overstatement to call it a simple codification of common law. The bill's limitations on damages means that employees will not be able to find meaningful legal representation, which effectively legalizes the firing of whistleblowers.

Testifying against the bill were Paul Bullman, Paul A. Bullman L.L.C., Missouri Association of Trial Attorneys; and Jonathan Berns, Missouri Association of Trial Attorneys.